

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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| WALTER SHUKER, et al. | : | CIVIL ACTION |
| | : | |
| v. | : | No. 13-6158 |
| | : | |
| SMITH & NEPHEW PLC, et al. | : | |

ORDER

AND NOW, this 31st day of March, 2015, for the reasons set forth in the accompanying Memorandum, it is ORDERED Plaintiffs' Motion for Leave to File Second Amended Complaint Based on Results of Court-Ordered Discovery (Document 66) is GRANTED. The proposed Second Amended Complaint attached as Exhibit E to Plaintiffs' Motion shall be deemed filed.

It is further ORDERED Defendant Smith & Nephew, Inc.'s Motion for Summary Judgment (Document 59) is GRANTED as follows:

- Judgment is entered in favor of Smith & Nephew, Inc. as to Counts I, III, and V of the Second Amended Complaint on the basis that the claims set forth in those Counts are expressly preempted under 21 U.S.C. § 360k(a).
- Counts II, IV, VI, and VII of the Second Amended Complaint are dismissed pursuant to Federal Rules of Civil Procedure 12(b)(6) and/or 9(b). Insofar as Counts II and VI are based on off-label promotion, those claims are dismissed without prejudice to Plaintiffs' right to file a further amended complaint that corrects the pleading deficiencies identified in the accompanying Memorandum. Count VII is also dismissed without prejudice. Plaintiffs shall have until April 30, 2015, to file a further amended complaint. Count IV and the balance of Count II are dismissed with prejudice.

BY THE COURT:

/s/ Juan R. Sánchez
Juan R. Sánchez, J.